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# **ANALYZING THE LEGAL RECOGNITION AND PROTECTION OF SAME-SEX MARRIAGES IN ZIMBABWE**

AUTHORED BY - TAKUDZWA LESLEY MUTIMUSAKWA

## **ABSTRACT**

One of the most controversial issues in the past recent history has been the question of legally acknowledging or recognising LGBTQ community rights especially pertaining to same sex marriage. Recognising Same Sex Marriage is to acknowledge the legal or social union between two individuals of the same sex, allowing them the same legal rights and responsibilities that the heterosexual couples traditionally have in marriage. The concept of same sex marriage is considered by the majority of the society as a taboo as it is not in line with their deep-rooted beliefs and traditions. DWhoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine as section 73 of Zimbabwe criminal act depicts

This paper looks into the big problems connected to accepting same-sex marriages in India. It considers how society, culture, and laws in the country all play a part in these challenges.

By looking at what most people think and what happened in the past, this research points out that traditional beliefs and deep-rooted cultural values make it hard to allow same-sex marriages. It also checks how the laws and recent court decisions affect LGBTQ+ rights in the country. By bringing together information from different places, the paper tries to give a better understanding of the various challenges that stop people from accepting and legally recognising same-sex marriages in India.

We also looks at how different challenges affect individuals in the LGBTQ+ community. Things like gender identity, how much money someone has, and where they live all play a part. The goal of this paper is to give a full picture of the difficulties around accepting and legally acknowledging same-sex marriages in the Indian social and cultural setting.

## INTRODUCTION

Recognising Same Sex Marriage is to acknowledge the legal or social union between two individuals of the same sex, allowing them the same legal rights and responsibilities that the heterosexual couples traditionally have in marriage. The concept of same sex marriage is considered by the majority of the society as a taboo as it is not in line with their deep-rooted beliefs and traditions. One of the most controversial issues in the past recent history has been the question of legally acknowledging or recognising LGBTQ community rights especially pertaining to same sex marriage.

The acknowledgment of same-sex marriages stands at the intersection of evolving social norms, cultural values, religious beliefs and legal frameworks, resulting in complex challenges in different global aspects. This study focuses on unraveling the various challenges hindering the recognition of same-sex marriages in the country of India in general. As the world witnesses' transformative shifts towards LGBTQ+ inclusivity, India however remains with its own unique sociocultural, religious beliefs and legal frameworks, where traditional norms and historical factors continue to shape how people view marriage and lack of legal frameworks fail to protect the rights of the LGBTQ community, contributing to how the country view same sex marriage.

The same sex marriage in India is considered to be something that is disgusting a taboo as it is viewed to be against the religious doctrines as well as the social norms and considered to be part of the Western culture which is not part of the Indian Culture or traditions. Set against the different background of a culturally diverse and rich society values, individuals pursuing acknowledgment for their same-sex unions faces multitude of challenges that are deeply rooted in the conservative attitudes, historical legacies. The absence of specific legal provisions also contributes to a complex challenge that are faced by individuals seeking recognition for same sex marriage.

While many modern-day Zimbabwean cultures historically practiced polygamy, there are no records of same-sex marriages as understood from a Western perspective being performed in those cultures. However, there is evidence for identities and behaviors that may be placed on the LGBT spectrum. In the 1990s, Canadian researcher Marc Epprecht wrote about pederastic marriages in colonial Zimbabwe. Contemporary oral evidence suggests that same-sex relationships were common and “prevelant” in Zimbabwe in the early 20<sup>th</sup> century, with research by Epprecht estimating that between 70% and 80% of men at the mines took on male

sexual partners It was during this time through the mining compounds and the influence of the Zulu language that the contemporary term ngochani, meaning homosexual entered the Shona language. These relationships differed strongly from the Western understanding of same-sex marriages, as men who entered these mine marriages continued to marry women and conform, or appear to conform, to gender expectations and would not consider themselves as homosexual or bisexual, or unfaithful to their marriage vows.

Epprecht further wrote that enabling migrant men to conserve their health and resources against the temptations of women in towns near the mines, ngochani strengthened their ability to shore up proper, fecund marriages This practice disappeared as Zimbabwe became more modernized and exposed to Christianity and Western culture in the late 19<sup>th</sup> century and early 20<sup>th</sup> century.

The Marriages Act Shona aka Mutemo weWanano enacted in 2022 by the Parliament of Zimbabwe, defines civil marriage as being monogamous, that is to say, it is the lawful union of two persons to the exclusion of all others and no person may contract any other marriage during the subsistence of a marriage under the general law. Although it does not explicitly forbid same- sex marriages, it generally refers to married spouses as man and woman Civil partnerships, legalised with the passage of this new law in 2022, are explicitly defined as being between a man and a woman who are both over the age of eighteen years, and have lived together on a genuine domestic basis without legally being married. However, Article 78 of the Constitution of Zimbabwe contains an explicit ban on same-sex marriages Persons of the same sex are prohibited from marrying each other.

This ban was introduced in 2013 following the adoption of a new constitution. The previous constitution enacted in 1980 did not contain such a ban. The new constitution was presented to Parliament on 5 February 2013 and subsequently approved in a referendum on 16 March 2013. Parliament approved it on 9 May and President Robert Mugabe signed it into law on 22 May 2013.

Law and development over the years

Within the African context, social institutions such as heterosexual relationships and marriages are highly controlled by the family as well as social and political institutions. According to Mbiti (1975: 107) “there are, in all African societies, regulations concerning those that one may not marry. These are most often people of one’s own clan, and relatives of one’s mother

or father up to a certain degree of kinship.” It is in this light that a practice such as homosexuality seem to have no place and unthinkable in Zimbabwe. The reason simply being that amongst traditional Zimbabwean societies, it is almost taboo to engage in a sexual relationship involving people of similar sexual orientation, hence a homophobic attitude permeates across most Zimbabwean families, social and political institutions as well as African communities at large.

Historically, in Zimbabwe, homosexuality has been, and continues to be treated with derision, contempt and humour. Although grassroots traditional Zimbabwean societies did not have laws that outlawed homosexuality, the practice itself was saliently discouraged by the mockery and scorn given to people with homosexual orientation. Hence, in traditional Zimbabwean societies, acts of sex for non-reproductive purposes, for Mark Epprecht (1996 14), were considered evidence of immaturity or witchcraft. Worse-still, homosexuality, which was, and continues to be unthinkable because even today, many serious Zimbabweans will say *Tine nyaya dzokutaura dzakakosha, pane iyi yokutungana kwembudzi* meaning to say that we have other serious issues that are worth discussing and not homosexuality.

While it is not the position of this paper that homosexual orientation is alien to traditional Zimbabwean societies, it is the observation of this writer that such behavior was considered weird and heavily discouraged as implied also by the importance of procreative marriages. No wonder why in pre-colonial Zimbabwean traditional societies, as throughout the region, riches and the good life in general were primarily measured in people, especially children.

Children, in addition to their social importance, were also valued as crucial economic and political assets. Thus, heterosexual marriage was the vocation those children were taught from their earliest years. It was also virtually the only sensible path to a relatively secure old-age.

Choosing not to marry was thus simply not a viable life choice, for men and women. Also, it suffices to note that our definition of sexuality and marriage should be deeply rooted in our society and nation’s history and tradition. The practice of same sex may seem to be a result and requirement of the philosophy and discourse of liberalising and the democratising societies, but really it is very difficult to accept it within the Zimbabwean context. While purporting to be an agenda of a libertarian society, some thinkers are of the persuasion that the practice of homosexuality has some imperial or colonial overtones in not only Zimbabwe, but

Africa at large

2013

Zimbabwe approved a new Constitution, article 78(3) of which provides that persons of the same sex are prohibited from marrying each other.

2014

Local LGBT organisation Gays and Lesbians of Zimbabwe (GALZ) faced severe discrimination and legal action throughout 2014. In February, after a lengthy court trial, the Harare Magistrates Court cleared the Chair of GALZ of running an “unregistered” organisation in contravention of the law. In March, police arrested two members of GALZ for organising a media training workshop without police clearance. In December, a group of intruders forced their way into the private year-end event of (GALZ), attacking, robbing, and leaving 35 attendees injured.

However, in January, the High Court ruled that the 2012 raid on the offices of GALZ (see below) was unlawful

2015

Raymond Sibanda successfully appealed against being fired from the civil service for allegedly engaging in homosexual activities. Reportedly, Labour Court President Justice Evangelista Kabasa determined that Mr. Sibanda’s appeal against his dismissal was valid as no one should be dismissed from work on the basis of their sexual orientation

2017

The US Department of State report noted that some families subject LGBT relatives, particularly women, to corrective rape and forced marriages to encourage heterosexuality. These crimes were rarely reported.

President Robert Mugabe, who was known for making deeply homophobic comments on numerous occasions, was ousted by his party in November. In 2015, Mugabe declared to the UN General Assembly that Zimbabwe rejects attempts to proscribe new rights contrary to its values, norms, traditions, and beliefs. We are not gays, he asserted. In 2013, he stated that gays were worse than dogs and pigs and threatened to behead them.

2019

Ricky Nathanson, a transgender woman, won her case at the High Court at Bulawayo after suing the police for unlawful arrest, detention, malicious prosecution and emotional distress pursuant to her arrest in January 2014 by six riot police officers on charges of criminal nuisance for wearing female clothes and using a female toilet. Nathanson was awarded \$400,000 in damages

2021

In November, gay TV star Somizi Mhlongo cancelled a trip to Zimbabwe after the Apostolic Christian Council of Zimbabwe wrote to the government to ban his entry to the country. Mhlongo had been invited to the reopening of a restaurant in Harare.

Section 73 of the Criminal Code of Zimbabwe outlaws same-sex relations under “sodomy” and “indecent act” clauses. Same-sex marriage is banned by the constitution, and no explicit legal protections exist for LGBTIQ people. The government has carried out a long-lasting campaign against the recognition of LGBTIQ human rights. This has given law enforcement and government officials the green light, while the Criminal Code has provided legal cover to target, arrest, extort, and harass LGBTIQ people, particularly GBIQ men and transgender women.

Violence and harassment at the hands of private individuals is also an issue. Societal opinion of LGBTIQ people is largely negative, and LGBTIQ issues are highly taboo, with the exception of the younger generation in urban areas. LGBTIQ people are often rejected by their families. The media tends to depict LGBTIQ persons negatively and sensationalize LGBTIQ issues. Politicians regularly use anti-LGBTIQ hate speech, while religious organizations campaign against the recognition of the human rights of LGBTIQ people.

There appear to be a issue as to whether homosexuality is opposite to normal law, or that it is in similarity with the laws of nature. Numerous contend that it is against nature, but there appear to be no self-evident reasons to accept so. This area will receive contentions that attempt to vanquish the hone of homosexuality utilizing the common law position with respects to human sexuality. The contention proffered in this segment, hence, is that gay person acts go against the normal ethical law. As Muyembe and Muyembe, (2001 286) see it, as human creatures we must regard the laws inalienable in nature, and work with nature and not against it we still

require to see that our sexuality as well is such a normal environment whose characteristic laws we have to respect. This contention be taken in the light of certain unnatural ones that are unconventional to sexuality like homosexuality.

Generally, it is accepted that, it is a law of nature to reproduce, and at the same time it is out of the ordinary' to be pulled in to people of comparable sexual introduction. The fundamental assumption of this unnaturalness contention is that the sole reason of any sexual one ought to be the reproduction of species, something else any sexual one exterior this basically massacres its quintessence. Richness in common, acts as a all around challenged and basic ethicalness that is given a uncommon position in any marriage setup notwithstanding of contrasts that exist among individuals. For occurrence, in conventional African social orders, the peoples' capacity to control and go against nature was restricted, but wherever they thought they may impact it in arrange to increment richness, they may do so in arrange to deliver marriage a few shape of dignity

### **Conclusion**

To begin with thing you are gone up against with when you walk into the benefit area of the South African government office in Harare is a South African office of domestic undertakings blurb on the prepare to enroll respectful unions, counting samesex relational unions. Why is this curiously? Since Zimbabwe's to begin with draft structure discharged final week unequivocally saves marriage for oppositesex couples in not one but two areas of the structure. Amid the same week, Zambia discharged its draft structure which essentially prohibits samesex couples from the right to marriage.

The introduction to Zimbabwe's draft structure begins off on a promising notes that Joined together in our differing qualities by our common crave for flexibility, equity and balance Reaffirming our commitment to maintaining and protecting principal human rights and opportunities Cherishing flexibility, peace, equity, resilience, thriving and patriotism in look of modern wildernesses beneath a common destiny.

But a few areas afterward, the Structure purposely denies samesex marriage.

On the confront of it, such prohibitions are clearly biased, denying samesex couples the opportunity to have their committed deep rooted connections managed societal status through

the assignment of marriage. Such separation no question causes hurt to same-sex couples since it classifies them as diverse from, and less meriting than, opposite-sex couples. The past decade has seen expanding lawful and political challenges against the denial of same-sex relational unions, with 2012 as of now showing up to be the year in which the wrangle about on the forbiddance or acknowledgment of same-sex relational unions will come to the fore more than ever before.

Interestingly, this wrangle about is seething on two landmasses North America and Africa at the same time. The timing of this wrangle about coincides with a partitioned but related wrangle about: whether the Joined together States has the right to demand that autonomous African states recognize the right not to be separated against based on sexual introduction and decriminalize consensual same-sex sexual conduct, or not. It remains troublesome to elude the incongruity that the Joined together States is utilizing sexual introduction as a political arranging apparatus in their dealings with Africa when it proceeds to be such a challenged issue in that country.

